5

Other proposals for reform

5.1 One of this inquiry's terms of reference relates to the balance between regulatory efficiency on the one hand, and environmental protections on the other. The Committee was interested to hear the perspectives of inquiry participants, and their assessments of whether the current balance between the two is appropriate. This chapter will briefly canvass some of those views, before considering further proposals for reform not yet covered in this report.

Balance between efficiency and environmental protection

5.2 The Committee heard evidence from a wide range of stakeholders, including environmental groups, members of the business community, the agricultural and resources sectors, developers, infrastructure organisations, government bodies, professional associations, and members of the broader community. The views provided regarding the overall balance of the regulatory system to ensure adequate environmental protection while minimising the costs of compliance for industry, fall broadly within three categories: those advocating more regulation; those advocating less regulation; and the remainder—a portion of inquiry participants—wanting to maintain the same amount of regulation while seeking better and more efficient administration of environmental laws.

5.3 Several witnesses discussed the benefits of regulation as a means of achieving environmental protection. The Law Council of Australia (LCA) provided many examples of environmental regulation that has created environmental, social, commercial and economic benefit.[1] The Environmental Farmers Network (EFN) noted that:

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1 Law Council of Australia (LCA), *Submission 37*, pp. 8–9.

> Regulation is quite often the most cost-effective way of achieving environmental outcomes … Basically we think environmental regulations are a very important tool. We are opposed to cutting and throwing them in the bin, because they been built up over a long period of time, based on good reasons.[2]

5.4 Some inquiry participants were in favour of increasing the amount of regulation in order to ensure adequate environmental protections. For example, the Lock The Gate Alliance stated that, in its experience:

> … the failure of legislation to set out clear thresholds for environmental impacts that will not be countenanced contributes a lot to the inefficiency and ineffectiveness of environmental regulation.[3]

5.5 A number of witnesses considered the current level of regulation to be too high. For example the National Farmers' Federation (NFF) called on the Government to identify and remove unnecessary regulations and consider non-regulatory mechanisms for delivering environmental benefits.[4] Similarly, the Property Council of Australia (PCA) expressed:

> … concerns … around over-regulation, which often leads to a reassignment of resources at a company level away from innovation and moves forward in sustainability and instead to reporting and other responses to government regulation …[5]

5.6 However, a portion of inquiry participants considered that the current amount of regulation was appropriate and adequate for delivering strong environmental protections, but called for those regulations to be administered more efficiently.[6] For example, the Green Building Council of Australia identified that the two goals of regulatory efficiency and good environmental outcomes were consistent with each other:

> We, as an organisation, support improving standards and increasing rigor around reducing greenhouse gas emissions but we also recognise that the burden on organisations or developers

2 Mr Andrew Bradey, President, Environmental Farmers Network (EFN), *Committee Hansard*, 2 May 2014, pp. 24.

3 Ms Nell Schofield, Sydney Coordinator, Lock the Gate Alliance, *Committee Hansard*, 1 May 2014, p. 34.

4 National Farmers' Federation (NFF), *Submission 9*, pp. 2, 9.

5 Ms Caryn Kakas, Head, Government and External Affairs, Property Council of Australia (PCA), *Committee Hansard*, 1 May 2014, p. 5.

6 Bureau of Steel Manufacturers of Australia (BOSMA), *Submission 12*, p. 2.

> or building owners to report against that should be as efficient and as streamlined as possible.[7]

5.7 The Minerals Council of Australia (MCA) expressed a similar view:

> … streamlined approvals processes and effective environmental regulation are not mutually exclusive concepts and we do not seek in any way to remove or to diminish environmental safeguards.[8]

5.8 The MCA also suggested that regulations needed to be refined to ensure they are delivering the environmental outcomes intended:

> … what we see is an ever-escalating range of requirements on environmental performance and conditions, which actually does not translate into environmental outcomes on the ground.[9]

5.9 The Australian Petroleum Production and Exploration Association (APPEA) submitted that duplication in the system can be removed without affecting environmental outcomes.[10] Indeed, the PCA suggested that removing duplication could actually improve environmental outcomes:

> Each time well intentioned governments add to the environmental reporting and compliance burden, there is a very real trade-off between the time consumed by compliance, and the resourcing of practical sustainability measures.[11]

5.10 Similarly, the Australian Network of Environmental Defenders Offices (ANEDO) expressed its opposition to duplication:

> ANEDO supports efficient and effective environmental regulation. We do not support unnecessary or duplicative laws. … We do not believe in regulation for regulation's sake but in using the appropriate regulatory tools to ensure ecologically-sustainable development and the protection of the Australian environment.[12]

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7 Ms Katy Dean, Manager, Advocacy, Green Building Council of Australia, *Committee Hansard*, 1 May 2014, p. 14.

8 Mr Brendan Pearson, Chief Executive Officer, Minerals Council of Australia (MCA), *Committee Hansard*, 20 June 2014, p. 1.

9 Ms Melanie Stutsel, Director, Health, Safety, Environment and Community Policy, MCA, *Committee Hansard*, 20 June 2014, p. 5.

10 Mr Michael Bradley, Director, External Affairs, Australian Petroleum Production and Exploration Association (APPEA), *Committee Hansard*, 20 June 2014, p. 8.

11 PCA, *Submission 16*, p. 9.

12 Ms Rachel Walmsley, Policy and Law Reform Director, EDO NSW, Australian Network of Environmental Defender's Offices (ANEDO), *Committee Hansard*, 1 May 2014, p. 38.

5.11 In its submission to the inquiry, the LCA emphasised that 'regulation needs to be separated from the manner of its administration …'[13] Indeed, the LCA suggested that objections to the current regulatory regime may be due to confusion about whether delays and complexities are being caused by the laws themselves, or the overly bureaucratic application of them.

5.12 The evidence outlined above indicates that various industries have differing views on the current level of environmental regulation and how it impacts on their operations. The remainder of this chapter canvasses specific suggestions for streamlining the way in which environmental regulations are streamlined.

Priorities for change

5.13 The Committee believes that the implementation of the one stop shop proposal, and the recommendations made by the Committee in response to stakeholder feedback, will streamline environmental regulation in all jurisdictions. Furthermore, the Committee is pleased to note the advice of the Department of the Environment (DoE) that all jurisdictions have agreed to pursue a national review of environmental regulation.[14]

5.14 Notwithstanding, during this inquiry a range of stakeholders put forward suggestions on additional priority areas that may benefit from further reform. These relate to the following headings, which are discussed throughout the remainder of this chapter:

- regulations relating to energy efficiency and renewable energy;
- further streamlining of regulation between jurisdictions; and
- stakeholder relations.

Energy efficiency and renewable energy

5.15 Various Commonwealth legislation and programs aim to foster reduced energy usage and costs along with providing a range of beneficial environmental outcomes. These include the: *Energy Efficiency Opportunities Act 2006* (Cth) (EEO Act); Commercial Building Disclosure (CBD) Program; National Greenhouse and Energy Reporting Scheme (NGERS); and the Renewable Energy Target. Some are administered by the DoE, others by the Department of Industry (DoI).

13 LCA, *Submission 37*, p. 12.

14 Mr Malcolm Thompson, Deputy Secretary, Department of the Environment (DoE), *Committee Hansard*, 26 June 2014, p. 1.

5.16 Several stakeholders gave evidence in favour of rationalising energy efficiency programs—which, they claimed, together involved a degree of duplication, rigidity and unnecessary administrative burden and redundancy—given standard business practices.[15]

5.17 Others commented that the legislation itself had not led to these difficulties rather it was due to the style and application of the regulations or how they were administered.[16] Many stakeholders submitted that reporting obligations were overly onerous and yet ineffective.[17]

5.18 This section will review some of these programs, any ongoing concerns identified by stakeholders and some suggestions for improvement.

Energy Efficiency Opportunities Act

5.19 The EEO Act requires that any business whose annual energy usage exceeds 0.5 petajoules identify, evaluate and report on energy efficiency opportunities. The aim of the Act is to encourage implementation of cost effective energy efficiency opportunities.[18]

5.20 Representatives from various sectors argued that the EEO Act imposes an unnecessary reporting and financial burden for little additional benefit; that it duplicates the requirements of other schemes; and that it is redundant given that many of its objectives are already achieved through standard business practices.[19] These claims are explored in this section.

5.21 Inquiry participants stated that the EEO Act imposes administrative and compliance costs on businesses, while also resulting in administrative costs for government.[20] For example, APPEA claimed that costs:

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15 APPEA, Business Council of Australia (BCA), and MCA, *Submission 24*, pp. 2, 7; APPEA, *Submission 51*, p. 9; Mr Andrew Doig, Chief Executive Officer, Australian Sustainable Business Group (ASBG), *Committee Hansard*, 1 May 2014, p. 2; Dr Greg Picker, Policy Advisor, Air Conditioning and Refrigeration Equipment Manufacturers Association (AREMA), *Committee Hansard*, 20 June 2014, p. 36; Ms Penny Barker, Group Manager, Environment and Sustainability, Asciano, *Committee Hansard*, 20 June 2014, p. 44.

16 Mr Greg McIntyre SC, Australian Environment and Planning Law Group, Legal Practice Section, LCA, *Committee Hansard*, 19 June 2014, p. 1.

17 Mr Charles Thomas, National Policy Manager, PCA, *Committee Hansard*, 1 May 2014, p. 11; Dr Picker, AREMA, *Committee Hansard*, 20 June 2014, p. 36.

18 Chamber of Commerce and Industry of Western Australia (CCIWA), *Submission 79*, p. 7.

19 BOSMA, *Submission 12*, p. 2; Australian Industry Greenhouse Network (AIGN), *Submission 22*, p. 2; APPEA, BCA, and MCA, *Submission 24*, p. 7; Cement Industry Federation (CIF), *Submission 33*, p. 4; APPEA, *Submission 51*, p. 10; Brickworks Limited, *Submission 68*, p. 9; CCIWA, *Submission 79*, p. 7; ASBG, *Submission 80*, p. 5.

20 BOSMA, *Submission 12*, p. 3; AIGN, *Submission 22*, p. 2; APPEA, BCA, and MCA, *Submission 24*, p. 7; CIF, *Submission 33*, p. 4; Brickworks, *Submission 68*, p. 9.

> … can, for each participant, approach $500,000. In addition, the Department of Industry incurs administration costs for the EEO programme that total around $8 million.[21]

5.22 The PCA explained that one impact of the EEO Act reporting requirements was that resources were being consumed in achieving compliance with reporting requirements rather than being available to be applied to constructive ways to make organisations more environmentally sustainable.[22] The PCA also suggested that ongoing review of EEO Act reporting requirements would ensure that the costs of complying were reasonable, particularly in light of whether the Act was achieving the desired outcomes.[23]

5.23 Some stakeholders stated that the EEO Act duplicated other accountability mechanisms relating to energy efficiency, such as the *Building Energy Efficiency Disclosure Act 2010* (Cth); the Building Code of Australia; the National Construction Code; and NGERS.[24]

5.24 Furthermore, since energy efficiency is an economic driver of standard business practices, the EEO Act was widely nominated as a redundant imposition on industry and business.[25] For example, the Committee was advised that in the commercial property sector:

> The identification of energy efficiency opportunities and assessment of their commerciality is a core part of the asset management business.[26]

5.25 The PCA also commented that many businesses have demonstrated an ongoing commitment to sustainability.[27] Similarly, Mr Steven Mouzakis of Brickworks Limited, a company conducting business involving extremely energy intensive processes, told the Committee that:

> … we have a nationwide program of innovation for energy efficiency and a company ethos for minimising our environmental footprint.[28]

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21 APPEA, *Submission 51*, p. 10.

22 Mr Thomas, PCA, *Committee Hansard*, 1 May 2014, p. 11.

23 Ms Kakas, PCA, *Committee Hansard*, 1 May 2014, p. 11.

24 Ms Kakas, PCA, *Committee Hansard*, 1 May 2014, p. 5; Mr Thomas, PCA, *Committee Hansard*, 1 May 2014, p. 6; BOSMA, *Submission 12*, p. 2; Australian Forest Products Association (AFPA), *Submission 34*, p. 4.

25 BOSMA, *Submission 12*, pp. 2–3; PCA, *Submission 16*, pp. 10–11; AIGN, *Submission 22*, p. 2; APPEA, BCA, and MCA, *Submission 24*, pp. 2, 7; CIF, *Submission 33*, pp. 4–5; APPEA, *Submission 51*, p. 10; Brickworks, *Submission 68*, p. 9; CCIWA, *Submission 79*, p. 7.

26 PCA, *Submission 16*, p. 12.

27 Mr Thomas, PCA, *Committee Hansard*, 1 May 2014, p. 11; Brickworks, *Submission 68*, p. 2.

28 Mr Steven Mouzakis, National Energy and Sustainability Manager, Brickworks, *Committee Hansard*, 20 June 2014, p. 29.

5.26 Mr Martin Hoffman from the DoI explained that, from the Department's perspective, the aims of the EEO Act had been achieved. The Act had encouraged companies to review their energy usage and identify opportunities for improvement, and had built a significant capacity in industry in relation to energy efficiency opportunities.[29]

5.27 Mr Hoffman continued that, in view of the increased level of awareness of energy efficiency within industry, there was no longer any need to continue with compulsory review and reporting as required under the EEO Act.[30]

Committee comment

5.28 The Committee notes that the EEO Act was repealed on 4 September 2014, which will have now addressed the issues identified by stakeholders above. The Committee is pleased that a program that placed unnecessary and costly burdens on industry without delivering substantial environmental benefits has been discontinued.

National Greenhouse and Energy Reporting Scheme

5.29 NGERS has been operating since 2007. The scheme's legislated objectives are to: underpin the carbon price mechanism; inform policy-makers and the Australian public; meet Australia's international reporting obligations; and provide a single national reporting framework for energy and emissions reporting.[31]

5.30 Stakeholders argued that while the intentions of the scheme may be worthwhile, the data collection methodologies duplicated other reporting requirements and yet did not produce accurate, useful data. Another criticism of the scheme related to technology and the user interface. These matters are discussed below.

5.31 Several stakeholders referred to duplication of reporting requirements between NGERS and other environmental programs such as the EEO Act, CBD Program, National Pollution Inventory, the National Australian Built Environment Rating System (NABERS) and Green Star; and data required by the Australian Bureau of Statistics, the Australian Bureau of

29 Mr Martin Hoffman, Deputy Secretary, Department of Industry (DoI), *Committee Hansard*, 26 June 2014, p. 4.

30 Mr Hoffman, DoI, *Committee Hansard*, 26 June 2014, p. 4.

31 DoE, 'National Greenhouse and Energy Reporting' <http://www.environment.gov.au/climate-change/greenhouse-gas-measurement/nger> viewed 18 September 2014.

Agricultural and Resource Economics and Sciences, and the Building Code of Australia.[32]

5.32 Some stakeholders explained that the way in which data was required to be collected was impractical. For example, the Cement Industry Federation (CIF) stated that it was impractical to provide exact details:

> … the level of detail required, for example the emissions of each individual cement truck, does not lead to accurate reporting …[33]

5.33 The PCA stated that 'reporting of incidental emissions is complicated, ill-defined and does not significantly contribute to our understanding of overall emissions'.

5.34 Business SA noted that while NGERS may be able to offer methodologies to measure greenhouse gas emissions for the Emissions Reduction Fund:

> … data quality standards for specific calculations within the boundaries of a site may not always be able to be met as internal measurements lack system and meter integrity …[34]

5.35 The Bureau of Steel Manufacturers of Australia (BOSMA) argued that some NGERS data would be more effectively captured upstream of end users at the level of importers, sellers and manufacturers of the materials.[35]

5.36 The Committee heard about some problems with the NGERS software system, OSCAR. BOSMA experienced technical challenges, such as data entry issues, logjams and software failure, when attempting to submit required information before cut-off dates.[36]

5.37 In its submission the DoE confirmed its intention to work 'with the Clean Energy Regulator to pursue opportunities for further streamlining' of NGERS. [37]

Committee comment

5.38 The Committee supports the Department's stated intention to investigate and implement streamlining to reduce duplication and improve the efficiency of the NGERS.[38]

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32 BOSMA, *Submission 12*, p. 4; PCA, *Submission 16*, p. 12; AFPA, *Submission 34*, pp. 4–5; APPEA, *Submission 51*, p. 9; ASBG, *Submission 80*, pp. 5, 7.

33 CIF, *Submission 33*, p. 5.

34 Business SA, *Submission 14*, p. 2.

35 BOSMA, *Submission 12*, p. 4.

36 Mr Doig, ASBG, *Committee Hansard*, 1 May 2014, p. 1.

37 DoE, *Submission 19.1*, p. 17.

38 DoE, *Submission 19.1*, pp. 16–17.

Renewable Energy Target

5.39 The Renewable Energy Target (RET) was established in 2000 with the intention of raising funds from electricity users in order to provide subsidies to producers of renewable energies, such as solar and wind. The dual aims are to reduce greenhouse gas emissions and encourage the use of renewable energy sources. The RET includes two sub-schemes: the Large-scale Renewable Energy Target (LRET) and the Small-scale Renewable Energy Scheme (SRES).

5.40 Evidence to this inquiry suggested that the RET is only minimally concerned with environmental benefits; is burdensome without benefit; and reduces business confidence and therefore limits investment and growth.

5.41 The Clean Energy Council (CEC) submitted that the RET's goals are not significantly based on providing environmental benefits:

> … of the three key goals articulated there only one is an environmental goal (relating to the reduction of greenhouse gas emissions).[39]

5.42 Both the CIF and Brickworks argued in their submissions that the RET is not an efficient regulatory scheme, it has a relatively high cost of abatement from an emissions perspective, and comes with a significant administrative burden.[40]

5.43 In its evidence to the Committee, the CEC also explained how the legislative requirement to regularly review the RET leads to uncertainty for business and reduces confidence in the investment structure:

> … most companies are always a little anxious: if there is a statutory review of a policy instrument every two years, you never quite know which way the cookie is going to crumble ...[41]

Committee comment

5.44 A government commissioned review of the RET by an expert panel reported in August 2014.[42] The report recommended that the LRET be closed to new entrants and phased out completely by 2030 and that the SRES be abolished immediately or phased out sooner than previously agreed.

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39 Clean Energy Council (CEC), *Submission 21*, p. 1.

40 CIF, *Submission 33*, p. 4; Brickworks, *Submission 68*, p. 10.

41 Mr David Green OBE FRSA, Chief Executive, CEC, *Committee Hansard*, 2 May 2014, p. 9.

42 Australian Government, *Renewable Energy Target Scheme: Report of the Expert Panel*, August 2014 < https://retreview.dpmc.gov.au/ret-review-report-0> viewed 18 November 2014.

5.45 The Committee agrees that many of the challenges associated with the RET, as stated by inquiry participants above, should be addressed or ameliorated as a result of this review.

Commercial Building Disclosure Program

5.46 The CBD Program was established by the *Building Energy Efficiency Disclosure Act 2010* (Cth) (BEED Act) and is administered by the DoI.[43]

5.47 In its submission to the inquiry, the DoI explained that the CBD Program requires energy efficiency information to be provided—via Building Energy Efficiency Certificates (BEECs)—when commercial office space of 2000 square metres or more is offered for sale or lease.

> The aim is to improve the energy efficiency of Australia's large office buildings by ensuring prospective buyers and tenants are informed of the energy efficiency of their prospective purchase and, therefore, the ongoing energy costs of operating the building without remediation.[44]

5.48 In order to obtain a BEEC, a proponent must engage a 'CBD accredited assessor'.[45] They are required to obtain a National Australian Built Environment Rating System (NABERS)[46] rating—which must be displayed on any lease or advertisement for the building—and carry out a CBD Program tenancy lighting assessment.

5.49 With regard to the time required to obtain a BEEC, the DoI specified that if a building does not already have a NABERS Energy rating and/or a CBD Program lighting assessment, it can take up to eight weeks for the initial assessment. Departmental processing of completed BEEC applications can then take up to 28 days.[47]

5.50 Stakeholders were extremely critical of aspects of the CBD Program—such as the tenancy lighting assessment, and the costs and time involved in complying with it—while they were broadly supportive of the NABERS rating system. These views are explored here.

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43 DoI, 'What is CBD?' <http://cbd.gov.au/overview-of-the-program/what-is-cbd> viewed 16 September 2014.

44 DoI, *Submission 72*, p. 14.

45 DoI, 'What is CBD?' <http://cbd.gov.au/overview-of-the-program/what-is-cbd> viewed 26 September 2014.

46 New South Wales Office of Environment and Heritage, 'NABERS: National Australian Built Environment Rating System' <http://www.nabers.gov.au/public/WebPages/Home.aspx> viewed 16 September 2014.

47 DoI, 'What is CBD?' <http://cbd.gov.au/overview-of-the-program/what-is-cbd> viewed 26 September 2014.

5.51 The DoI stated that the tenancy lighting assessment identifies the nominal lighting power density—that is, the amount of energy the lighting uses when it is in operation—and assesses the control systems that manage that.[48]

5.52 Even though changes to lighting infrastructure occur infrequently, the PCA claimed that the CBD Program can mean that some 'owners are required to undertake a lighting assessment more than annually'.[49]

5.53 In response to this the DoI explained that:

> … there is no requirement to get the ratings annually, other than situations where buildings are being sold, leased or subleased. Having said that, for a number of buildings that means they do it annually.[50]

5.54 The DoI explained that the CBD Program 'addresses an information gap whereby prospective buyers and tenants were [previously] unable to compare energy efficiency [of] buildings on a "like for like" basis'.[51] However, the PCA argued that 'the costs of the CBD Scheme radically outweigh the benefits'.[52]

5.55 The PCA submitted that, unlike the tenancy lighting assessment, NABERS—which is managed nationally by the NSW Office of Environment and Heritage, on behalf of Commonwealth, state and territory governments—is successful because it can be 'used to showcase a building's energy efficiency and gain a competitive edge in the market'.[53]

5.56 Stakeholders expressed dissatisfaction with the costs involved in obtaining the BEEC. The DoI explained that a processing fee is not charged but that:

> The cost of obtaining or updating a BEEC relates to the actual assessment and is negotiated between the building owner or lessor and the selected CBD accredited assessor. The cost can vary depending on the size and complexity of the property. The industry has advised that the approximate cost could be between $6,000 and $10,000.[54]

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48 Mr Gene McGlynn, Building and Community Energy Efficiency Branch, Energy Efficiency and Renewables Division, DoI, *Committee Hansard*, 26 June 2014, p. 4.

49 PCA, *Submission 16*, p. 10.

50 Mr McGlynn, DoI, *Committee Hansard*, 26 June 2014, p. 4.

51 DoI, *Submission 72*, p. 14.

52 PCA, *Submission 16*, p. 10.

53 PCA, *Submission 16*, p. 12.

54 DoI, 'What is CBD?' <http://cbd.gov.au/overview-of-the-program/what-is-cbd> viewed 26 September 2014.

5.57 The DoI advised the Committee that the BEED Act, including the CBD Scheme and matters relating to lighting assessments, would be reviewed in the latter part of 2014.[55]

Committee comment

5.58 The Committee notes the benefits of the NABERS system and notes support from the sector for the NABERS system in general.

5.59 The Committee agrees that changes to the BEED Act, in particular removing the need for routine lighting assessments other than when lighting infrastructure has been modified or replaced, would benefit stakeholders without increasing the risk to the environment.

Recommendation 3

The Committee recommends that the Department of the Environment commence a review and work with key stakeholders to streamline and improve the efficiency of the National Greenhouse and Energy Reporting Scheme to reduce duplication.

Recommendation 4

The Committee recommends that the Government amend the *Building Energy Efficiency Disclosure Act 2010* (Cth) to remove any requirement for routine lighting assessments of buildings. Further, that the Government amend the *Building Energy Efficiency Disclosure Act 2010* (Cth) to ensure a lighting assessment is only required at a point of major change to lighting infrastructure.

Further streamlining between jurisdictions

5.60 Inquiry participants submitted a range of other proposals for reform of Australia's environmental regulation in order to streamline its administration. In this section the following types of proposals are discussed:

- proposals addressing inconsistency;
- proposals addressing duplication;

55 Mr Hoffman, DoI, *Committee Hansard*, 26 June 2014, pp. 3–5.

- proposals improving efficiency; and
- moving towards a single, national regime of environmental regulation.

Proposals to address inconsistency

5.61 Although this report has discussed many proposals which seek to address inconsistencies in the environmental assessment and approvals processes between jurisdictions and between projects (see Chapter 4), inquiry participants also recommended three additional changes which, in their view, would ensure greater consistency in environmental regulation. These proposals include:

- addressing the inconsistencies in threatened species' listings between federal and state/territory jurisdictions;
- extending the accreditation of the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA); and
- requiring some form of accreditation for individuals submitting documentation for use in environmental assessment processes.

Threatened species listings

5.62 A broad range of inquiry participants recommended addressing the inconsistency between the federal and state/territory endangered and threatened species listings. Principally, it was recommended that a single, consolidated listing process be developed nationally.

5.63 For example, the Environment Institute of Australia and New Zealand (EIANZ) submitted that there is 'significant overlap and duplication of objections, processes and regulatory requirements' for the identification and conservation of endangered and threatened species and communities across federal and state/territory jurisdictions.[56] In the EIANZ's view, there is no advantage gained from these inconsistencies and no good reason for different approaches to be applied in different jurisdictions.[57]

5.64 Environmental organisations also advocated for a consolidated list of endangered and threatened species between the federal and state/territory jurisdictions. For example, ANEDO supported the development of a single list, commenting that it would enable proponents as well as the community to easily and more effectively understand which species are specifically protected in different geographical areas of Australia.[58]

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56 Environment Institute of Australia and New Zealand (EIANZ), *Submission 77*, p. 10.

57 EIANZ, *Submission 77*, p. 10.

58 Mr Nariman Sakukar, Senior Policy and Law Reform Solicitor, EDO NSW, ANEDO, *Committee Hansard*, 1 May 2014, p. 39.

5.65 Industry organisations also observe inconsistencies between listing processes in the various jurisdictions.[59] The MCA commented that the listing process is an 'additive process rather than a reductive process'. Further, the MCA explained:

> Additional species get added, but even where there is science to demonstrate that certain species are no longer in locations or are no longer threatened we do not actually see a process for removing species from that list. … If the science was done we are fairly confident that the listing of that species would actually be reduced from being threatened and, therefore, the environmental requirements would go back to something that is more appropriate to the level of risk on that species.[60]

5.66 The MCA therefore expressed its support for the introduction of a Threatened Species Commissioner, announced by the federal Environment Minister on 2 July 2014.[61]

5.67 Advice from the DoE suggests that preliminary work is being done by the Commonwealth, states and territories, with the ultimate objective being the development of one integrated threatened species list.[62]

5.68 In relation to concerns about threatened species lists being out of date, the DoE advised that species are, on occasion, de-listed or have their listing downgraded on the basis of emerging data.[63] An example was provided where analysis undertaken by proponents was provided to the Threatened Species Scientific Committee and resulted in a decision being made to de-list a species. This highlighted the system's ability to respond to on-the-ground experience backed up by sound analysis.[64]

5.69 The DoE also advised that there was cooperation in this area from state and territory governments:

> New information regarding a species' status is regularly provided by state and territory governments, particularly for species endemic to the jurisdiction. The Department has informal

59 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 5; Ms Kakas, PCA, *Committee Hansard*, 1 May 2014, p. 5.

60 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 5.

61 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 6. See also: Hon. Greg Hunt MP, Minister for the Environment, 'Threatened Species Protection', *Media Release*, 2 July 2014.

62 Mr Thompson, DoE, *Committee Hansard*, 26 June 2014, p. 6; Mr Dean Knudson, Acting Deputy Secretary, DoE, *Committee Hansard*, 26 June 2014, pp. 6–7.

63 Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, pp. 7–8.

64 Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, pp. 7–8.

> information sharing arrangements with all states and territories regarding threatened species.[65]

Extending NOPSEMA accreditation

5.70 On 1 January 2012, NOPSEMA acquired regulatory responsibility for occupational health and safety, structural integrity, environmental management and day-to-day operations for the offshore petroleum industry.[66] Environmental assessments and approvals of offshore petroleum and greenhouse gas activities in Commonwealth waters are governed by the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) *(*EPBC Act) and the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*.

5.71 In February 2014, the Government accredited NOPSEMA as the sole designated assessor of petroleum activities in Commonwealth waters, including those requiring approval under the EPBC Act.[67]

5.72 The streamlining of applications solely through NOPSEMA for such activities was welcomed by some inquiry participants, however Shell Australia noted that this new system 'applies only to new projects'.[68] Shell Australia submitted that, as it is still required to comply with original conditions of approval for its pre-existing projects, it must submit monitoring plans, environmental performance reports and other operational documents to both NOPSEMA and the DoE for approval. Shell Australia further commented:

> This … is a clear example of continued duplication and does not fit with the aim of the new… regime. Shell believes removal of this duplication would considerably reduce the regulatory burden on companies and increase efficiency while not having a detrimental effect on the environment or effectiveness of the regulatory framework.[69]

5.73 Similarly, APPEA expressed support for further streamlining of NOPSEMA and EPBC Act requirements.[70] APPEA also noted that, in its view, NOPSEMA has 'established itself as a robust environmental regulator' while also delivering efficiency savings 'in the order of $120 million'.[71]

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65 DoE, *Submission 19.2*, p. 1.

66 DoI, *Submission 72*, p. 9.

67 DoI, *Submission 72*, p. 9.

68 Shell Australia, *Submission 63*, p. 1.

69 Shell Australia, *Submission 63*, p. 1.

70 Mr Bradley, APPEA, *Committee Hansard*, 20 June 2014, p. 8.

71 Mr Bradley, APPEA, *Committee Hansard*, 20 June 2014, p. 8.

5.74 The DoI informed the Committee that further streamlining of approval processes through NOPSEMA was being progressed, in cooperation with state and territory governments.[72]

Certified environmental practitioners

5.75 Many inquiry participants were supportive of a requirement to have documentation for environmental impact assessments certified by accreditated environmental practitioners or consultants.[73] For example, the EIANZ submitted that such certification would 'provide a higher level of assurance' to governments, regulators, industry, and the community that 'appropriate and competent standards of good practice environmental management are being used under the EPBC Act'.[74]

5.76 Mr Jon Womersley, President of the EIANZ, commented on the purpose of accreditation or certification:

> … a person who prepares a report and a study about a particular aspect that goes into an environmental impact assessment should actually take personal responsibility and attest to the validity of the investigation that is being conducted and its compliance with the policy objectives and the rules that the Commonwealth or the state jurisdiction has set for those things.[75]

5.77 Similarly, the Places You Love Alliance submitted that the involvement of accredited practitioners who meet certain standards would address concerns that the quality of environmental impact assessments, and the supporting information contained within, should be 'substantially improved'.[76]

5.78 The MCA, although not theoretically opposed to the proposal, drew the Committee's attention to the range of different professional and generalist input to environmental impact statements, and questioned how such a system might operate in practice.[77]

5.79 The EIANZ, however, noted that the term, 'suitably qualified and experienced' persons, might be preferable as it 'does not presume that certification can only be provided by a person from a particular discipline

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72 Mr Hoffman, DoI, *Committee Hansard*, 26 June 2014, pp. 1–2.

73 Mr Richard Sharp, *Submission 1*, pp. 1–2; CLR Alan Haselden, *Submission 17*, p. 3; Mr David Hogg, *Submission 29*, p. 9; Places You Love Alliance (PYLA), *Submission 45*, p. 5; and EIANZ, *Submission 77*, p. 7.

74 EIANZ, *Submission 77*, p. 7.

75 Mr Jon Womersley, President, EIANZ, *Committee Hansard*, 19 June 2014, p. 13.

76 PYLA, *Submission 45*, p. 5.

77 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 6.

or profession'.[78] The EIANZ suggested that recognition over such a broad range of professions could occur through 'their professional grade membership of an organisation that holds its members accountable to a code of ethics and professional conduct'.[79]

5.80 The DoE did not offer any comment on potential difficulties with implementing such a proposal.[80] In response to a question from the Committee regarding the practical benefits of the proposal, the DoE stated that:

> It is fundamentally the responsibility of a project proponent to determine the most effective way to ensure the adequacy of their environmental impact assessment. The department therefore would suggest that proponents are best positioned to decide whether to engage assessors.[81]

Committee comment

5.81 The Committee notes the federal Environment Minister's announcement in July 2014 on the appointment of a Threatened Species Commissioner, Mr Gregory Andrews.[82] The Committee is pleased to note that among the Commissioner's priorities is the task of contributing to a 'process of reform to simplify and streamline the statutory recovery planning process'.[83]

5.82 The Committee is pleased to note the early work being done by the DoE and states and territories, and supports the development of a common approach to the listing of threatened species across Australia. Such a process would better enable industry and the community to efficiently and effectively understand and engage with the listing of species. A common approach would also give greater certainty to a range of stakeholders including industry, community and environmental advocates.

5.83 Further, the Committee considers that a consolidated list of threatened species, and the geographical areas which they inhabit, should be

78 EIANZ, *Submission 77*, p. 7.

79 EIANZ, *Submission 77*, p. 7.

80 DoE, *Submission 19.4*, p. 1.

81 DoE, *Submission 19.4*, p. 1.

82 Hon. Greg Hunt MP, Minister for the Environment, 'Threatened Species Protection', *Media Release*, 2 July 2014.

83 DoE, 'Threatened Species Commissioner—Terms of Reference' <http://www.environment.gov.au/system/files/pages/fc0ed96c-43e9-45b2-98ce-6f9d15200182/files/commissioner-tor.pdf> viewed 1 October 2014.

developed by the DoE in collaboration with the relevant state and territory regulators.

5.84 In making this recommendation, the Committee notes that any such list should not operate in a way where a proponent must address the project's impact on a species' habitat in jurisdictions or geographical locations which they do not inhabit. During the inquiry, the Committee heard examples of proponents being required to submit information to regulators on the impact of their proposal on fauna which had not inhabited the relevant area for thousands of years (see Chapter 4). The Committee strongly wishes to avoid a situation where proponents would be required to include irrelevant analysis of this kind.

5.85 Rather, the list should operate as a single entry point for industry and community organisations to quickly and easily identify which species are protected in any given geographical area.

Recommendation 5

The Committee recommends that the Department of the Environment, in collaboration with the newly formed Threatened Species Commissioner and the relevant state and territory regulators, work to develop:

- **a common approach to the listing of endangered and threatened species, and delisting of species that are no longer endangered;**
- **a single national list of endangered and threatened species which is regularly updated to reflect the reality of the contemporary environment and the latest available science; and**
- **a process that removes unnecessary duplication of science in assessments on threatened species and proactively assist jurisdictions to ensure timely and accurate considerations of threatened species in any geographical area.**

5.86 The Committee welcomes the streamlining of environmental assessment and approvals processes relating to offshore petroleum activities as delivered by the Government since February 2014. The Committee notes that seven months have passed since NOPSEMA assumed responsibility for environmental assessments under the EPBC Act for these activities. It is therefore appropriate to consider further opportunities to streamline

assessment and approvals for this industry, and whether further efficiency savings could be gained.

5.87 The Committee supports extending NOPSEMA's ongoing enforcement and maintenance of standards to projects which existed prior to February 2014, which would deliver greater consistency for organisations undertaking offshore petroleum activities. The Committee believes that, should NOPSEMA's responsibilities extend in this regard, the Authority should be granted appropriate resources to undertake these new tasks.

Recommendation 6

The Committee recommends the Government take action to further streamline the ongoing enforcement and maintenance responsibilities of the National Offshore Petroleum Safety and Environmental Management Authority to apply to offshore petroleum projects which were approved prior to February 2014.

5.88 The Committee is supportive of the development of a system of accreditation for those practitioners who are providing input to environmental assessment documentation. The Committee considers that requiring such accreditation could reasonably be expected to lift the standard of environmental impact assessments. Importantly, such accreditation could give the community and government authorities greater confidence in the information being provided and in the process itself.

Recommendation 7

The Committee recommends the Department of the Environment investigate methods of accreditation—including the relevant standards for accreditation—for environmental practitioners and contractors to enable the establishment of a professional standards body.

Proposals to address duplication

5.89 The extent of stakeholder concern about unnecessary duplication was discussed in earlier chapters of this report (see Chapter 3). Further to the recommendations regarding the one stop shop proposal submitted by inquiry participants (see Chapter 4), two other areas of duplicated

processes between federal regulators and state/territory regulators were identified: National Environment Protection Measures (NEPMs); and the issue of noise control.

5.90 Legislated in all Commonwealth, state and territory jurisdictions, the NEPMs are a 'special set of national objectives designed to assist in promoting or managing particular aspects of the environment'.[84] These include:

- air quality;
- marine, estuarine and fresh water quality;
- noise pollution;
- site contamination;
- hazardous wastes; and
- re-use and recycling of used materials.[85]

5.91 The Australian Sustainable Business Group (ASBG) stated that the Commonwealth's regulation of NEPMs tends to duplicate state policies and programs, with each jurisdiction having different reporting requirements.[86] Further, Mr Andrew Doig commented that states will vary in their requirements and processes:

> … some state jurisdictions will ask for different information and have different standardised ways of doing it within their own jurisdiction, and that can lead to additional workloads for organisations that are spread over a number of states.[87]

5.92 The CEC conveyed its concerns regarding the Commonwealth's emerging interest in federally regulating noise control measures, particularly in relation to wind farms. The CEC stated that these measures might duplicate existing state responsibilities and regulations.[88]

5.93 Mr David Green of the CEC commented that duplication can be detrimental to emerging industries:

> Duplication always involves additional cost and, when you are trying to move new technology into the marketplace or develop

84 (Former) COAG Standing Council on Environment and Water, 'National Environment Protection Measures' <http://www.scew.gov.au/nepms> viewed 1 October 2014.

85 (Former) COAG Standing Council on Environment and Water, 'National Environment Protection Measures' <http://www.scew.gov.au/nepms> viewed 1 October 2014.

86 Mr Doig, ASBG, *Committee Hansard*, 1 May 2014, p. 3.

87 Mr Doig, ASBG, *Committee Hansard*, 1 May 2014, p. 2.

88 Mr Green, CEC, *Committee Hansard*, 2 May 2014, p. 7.

> new products or services, any company is always very conscious of that.[89]

Committee comment

5.94 Although the Committee did not receive extensive evidence specifically on NEPMs during this inquiry, it can see many areas of potential duplication. Noting the significant progress that has been made towards reducing duplication in relation to environmental assessments and approvals, the Committee considers that there is scope for further reform in relation to NEPMs.

Recommendation 8

The Committee recommends that the Department of the Environment work with state and territory counterparts through Council of Australian Government processes to reduce, wherever possible, duplication between National Environment Protection Measures and related regulations, policies and programs within the states and territories.

5.95 The Committee notes the concerns of the CEC as they relate to the duplication of noise-related regulation by state/territory and federal authorities. The Committee would be supportive of action to reduce duplication in this area, noting the adverse impact such duplication can have on emerging industries in particular. The Committee is confident progress on this matter can be made through the recommendation above relating to NEPMs.

Proposals to improve efficiency

5.96 Chapter 4 broadly discussed how the one stop shop proposal will deliver improved efficiency in the administration of Australia's environmental regulations. Three additional suggestions were made by inquiry participants that, in their view, will drive further efficiency. These are discussed below.

Greater use of strategic assessments

5.97 Unlike project-by-project assessments that examine individual proposals (such as the construction and operation of a pipeline), strategic

89 Mr Green, CEC, *Committee Hansard*, 2 May 2014, p. 7.

assessments are large, 'landscape scale assessments' which consider a much broader set of actions.[90] For example, strategic assessments might broadly examine regional-scale development plans, housing development and its associated infrastructure (such as Melbourne's urban growth boundary[91]), or fire, vegetation, resource or pest management policies, plans or programs (such as South Australia's fire management policy[92] and Tasmania's Midlands water scheme[93]).

5.98 Both industry and environmental organisations supported greater use of strategic assessments under the EPBC Act. The PCA discussed the benefits of strategic assessments, commenting:

> … we get one set of rules; we are able to identify broad swathes of land; we are able to identify all of the environmentally significant items on that land; we are able to do an actual joined up understanding of what is required to protect those species and actually cost that upfront across all development in the area, and also wipe out what is in and what is out from the very beginning. We have seen that done very successfully under strategic assessments.[94]

5.99 Similarly, Ports Australia submitted that long-term plans, when aligned to specified standards and identified regulatory benefits, 'can commit agencies to certainty and consistency in regulatory requirements, certainty in timelines, and simplification of the process generally'.[95]

5.100 ANEDO also expressed support for the greater use of strategic assessments under the EPBC Act, stating that strategic assessments could have a range of benefits, including consolidating state and federal laws, carrying out all the assessment at once, and addressing issues such as cumulative impacts.[96] Similar comments were also made by the EIANZ.[97]

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90 DoE, 'Environment Assessments—Strategic Assessments', <http://www.environment.gov.au/protection/assessments/strategic> viewed 2 October 2014.

91 DoE, 'Strategic Assessment of Melbourne's Urban Growth Boundary' <http://www.environment.gov.au/protection/assessments/strategic/melbournes-urban-growth-boundary> viewed 2 October 2014.

92 DoE, 'Strategic Assessment of Fire Management Policy for Lands Under the Care and Control of the South Australian Minister for Sustainability, Environment and Conservation' <http://www.environment.gov.au/node/18598> viewed 2 October 2014.

93 DoE, 'Strategic Assessment of the Water Access Program for the Midlands Water Scheme, Tasmania' <http://www.environment.gov.au/node/18609> viewed 2 October 2014.

94 Ms Kakas, PCA, *Committee Hansard*, 1 May 2014, p. 9.

95 Ports Australia, *Submission 65*, p. 4.

96 Ms Walmsley, ANEDO, *Committee Hansard*, 1 May 2014, p. 40.

97 Mr Womersley, EIANZ, *Committee Hansard*, 19 June 2014, p. 12.

Committee comment

5.101 The Committee was pleased to hear from a range of stakeholders who were very positive about the benefits of strategic assessments. Having considered the evidence, the Committee is strongly supportive of greater use of strategic assessments, as they deliver more streamlined processes and allow for proactive consideration of environmental issues on a landscape scale.

Recommendation 9

The Committee recommends that the Department of the Environment continue to undertake strategic assessments with the states and territories and work proactively with industry, environmental groups and state and territory counterparts to identify further opportunities to carry out strategic assessments.

Availability of data

5.102 Several inquiry participants identified a need for improved data and mapping in relation to species distribution, including the development of a central repository for data held by different government and non-government bodies.[98]

5.103 The EIANZ submitted that there is an 'urgent need' to ensure that the data collected during environmental impact assessment processes, is:

> … collected and analysed in ways that allow it to be warehoused electronically so that it can be subsequently accessed by and added to through future project proponents.[99]

5.104 The EIANZ commended the Atlas of Living Australia as an example of 'an investment by the Commonwealth Government in an electronic platform that brings together data about the biological resources of Australia from a wide variety of sources'.[100]

5.105 The Association of Mining and Exploration Companies (AMEC) supported the creation of a central repository, submitting that the availability of data from geographic information system databases held by

98 For example: Bat Conservation and Rescue Queensland (BCRQ), *Submission 3*, pp. 4–5; EIANZ, *Submission 77*, p. 6; Association of Mining and Exploration Companies (AMEC), *Submission 83*, pp. 16–17.

99 Environmental Institute of Australia and New Zealand, *Submission 77*, p. 6.

100 Environmental Institute of Australia and New Zealand, *Submission 77*, p. 6.

government agencies would allow project proponents to better understand environmental and cultural sites surrounding their development.[101]

5.106 Bat Conservation and Rescue Queensland (BCRQ) supported the creation of a central database, submitting that mapping should be standardised in order to 'identify known areas of threatened species … [and be] updated as better information becomes available'. [102] BCRQ advocated that the availability of better mapping technologies would provide project proponents and the community with greater certainty.[103]

5.107 The MCA also supported the creation of a central database, however it was concerned to ensure that appropriate contextual information is made available for datasets, to provide certainty about the quality and reliability of the data.[104]

5.108 During its 'one stop shop' negotiations with the states and territories, the DoE has discussed broader use of web-enabled technologies which will enable 'discoverable, accessible and reusable' data that in turn, will allow stakeholders to 'search and make use of that data'.[105] The DoE also committed to 'liberate some of the information' that it holds, including the department's databases and 'information that has come from project proponents through various assessments'.[106]

Committee comment

5.109 The Committee believes that the creation of a central repository of environmental data for the future use by proponents and community organisations is worthy of further consideration.

5.110 The Committee notes the commitments from the DoE to make more of its environmental data publicly and readily available. The Committee considers that this effort would be complemented by the long-term goal of establishing an online central repository for environmental data collected by federal, state and territory regulators—through environmental assessment processes and otherwise—as well as interested industry and environmental bodies.

101 AMEC, *Submission 83*, pp. 16–17.

102 BCRQ, *Submission 3*, p. 4.

103 BCRQ, *Submission 3*, p. 4.

104 Ms Stutsel, MCA, *Committee Hansard*, 20 June 2014, p. 6.

105 Dr Rachel Bacon, First Assistant Secretary, DoE, *Committee Hansard*, 26 June 2014, p. 14.

106 Mr Thompson, DoE, *Committee Hansard*, 26 June 2014, p. 14.

Recommendation 10

The Committee recommends that the Department of the Environment coordinate with other relevant federal, state and territory agencies as well as interested non-government bodies to:

- **work towards making publicly available all environmental data gathered by government and non-government entities through environmental assessment processes;**
- **work towards establishing a central, easily accessible repository of environmental data held by various government and non-government agencies more broadly; and**
- **work to reduce requirements that cause duplication of existing unnecessary environmental data.**

Registration of chemicals for agricultural use

5.111 Two agricultural organisations submitted recommendations aimed at streamlining the process of registering chemicals for agricultural purposes. The NFF submitted that the registration of chemicals by the Australian Pesticides and Veterinary Medicines Authority (APVMA) is an 'area where regulation hinders the achievement of good environmental outcomes'.[107] The NFF gave the following example of this in practice:

> The rice industry currently uses Copper Sulfate to manage snails in rice crops. Niclosamide is a far superior treatment for this issue, as it kills not just the snails but their eggs, reducing the number of applications required. It also has no negative effect on our soils, as is the case with the current Copper Sulfate. The bureaucratic process adopted by the APVMA means that industry efforts to successfully register Niclosamide for use have been significantly delayed.[108]

5.112 The Australian Forest Products Association (AFPA) also submitted that the regulatory framework for agricultural and veterinary chemicals use is an area of environmental regulation 'where significant improvements in efficiency and effectiveness can be made'.[109] Among other concerns about the APVMA's processes, AFPA stated that there 'remains continued uncertainty' in the APVMA's risk assessment framework as well as the

107 NFF, *Submission 9*, p. 2.

108 NFF, *Submission 9*, p. 6.

109 AFPA, *Submission 34*, p. 5.

selection of re-approval and re-registration periods, commenting that these need to be 'better aligned with the principles of assessment for 'risk' rather than 'hazard'.[110] To address these concerns, AFPA recommended amendments to the APVMA's approval and registration system, including allowing for less frequent renewal of registered chemicals.[111]

Committee comment

5.113 The Committee was interested to hear about the experiences of the NFF and AFPA in relation to the registration of chemicals for agricultural purposes. Given the broad scope of the terms of reference, a thorough investigation of this matter was beyond the scope of this inquiry. However, the Committee was pleased to hear that the Commonwealth Government may be taking steps to ameliorate some of the concerns above,[112] and will watch with interest any further developments in this area.

Towards a single, national regime of environmental regulation

5.114 A recurring theme of much of the evidence received by the Committee was the overall need to move towards a single, national regime of environmental regulation; harmonisation of environmental laws across all states and territories. The Committee heard this evidence from a large number of stakeholders, across a broad spectrum.[113]

5.115 For example, the LCA advocated for 'one national set of environmental assessment standards'.[114] Similarly, the EIANZ commented:

> … increasing harmonisation of legislation is absolutely essential because of the duplication that exists between state and territory legislative models and the national legislative model.[115]

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110 AFPA, *Submission 34*, p. 5.

111 AFPA, *Submission 34*, p. 6.

112 Ms Jacqueline Knowles, Manager, Natural Resource Management, NFF, *Committee Hansard*, 20 June 2014, p. 22.

113 Mr Chris Johnson, Chief Executive Officer, Urban Taskforce Australia, *Committee Hansard*, 1 May 2014, pp. 24–5; Mr Sharp, *Submission 1*, p. 2; Australian Institute of Petroleum (AIP), *Submission 10*, p. 5, 6, 7–8; Business SA, *Submission 14*, p. 4; AFPA, *Submission 34*, p. 5; LCA, *Submission 37*, p. 14; Mr Chris Walker, *Submission 40*, p. 4; Regional Development Australia Far North Queensland and Torres Strait Inc (RDAFNQTS), *Submission 43*, p. 4; Cooperative Research Centre for Contamination Assessment and Remediation of the Environment, *Submission 57*, pp. 2–3; ASBG, *Submission 80*, pp. 8–9.

114 LCA, *Submission 37*, p. 14. See also: Mr McIntyre SC, LCA, *Committee Hansard*, 19 June 2014, p. 4.

115 Mr Womersley, EIANZ, *Committee Hansard*, 19 June 2014, p. 12.

5.116 Industry groups were also supportive. The Australian Institute of Petroleum submitted that harmonisation 'would ensure that policies originating in one state do not inform others on an ad hoc basis, but are implemented consistently'.[116] The ASBG favoured a long-term goal where environmental legislation is 'harmonised' under model legislation adopted in all jurisdictions:

> We would certainly support the ongoing COAG [Council of Australian Governments] process of trying to streamline environmental regulation. Looking at the way that the workplace health and safety legislative process has developed, perhaps in my lifetime we might see something similar in the environmental field, where [regulation is] … put under one piece of model legislation taken up by individual state jurisdictions. That is a very long term view.[117]

5.117 Regional Development Australia Far North Queensland and Torres Strait commented that 'a lack of a coherent whole-of-government policy narrative exacerbates uncertainty with, at times, opposing objectives being pursued by different departments within the same government'.[118]

Committee comment

5.118 The Committee is very supportive of the Council of Australian Governments (COAG) working towards standardising environmental regulations in Australia. Though the environment and biodiversity differs between each state and territory, the processes which regulate their protection should not be substantially different as they are currently. Harmonisation of this kind could feasibly allow for differentiation between the ecologies of northern and southern Australia, of east and west.

5.119 Indeed, the Committee heard throughout the inquiry calls from both industry and environmental advocates of the need for standardisation or harmonisation of environmental regulation as a way to drive further efficiencies, confidence and clarity within the system. Furthermore, it would achieve a more favourable balance between regulatory costs without compromising Australia's environmental protections. Although this is a long term goal, the Committee believes that this is the next logical step in the efforts to streamline regulation.

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116 AIP, *Submission 10*, p. 5.

117 Mr Doig, ASBG, *Committee Hansard*, 1 May 2014, p. 2.

118 RDAFNQTS, *Submission 43*, p. 4.

Recommendation 11

The Committee recommends that the Commonwealth continue to work with established Council of Australian Governments processes to advocate for harmonisation of environmental regulation throughout all state and territory jurisdictions. Further, that Council of Australian Governments processes continue to be used to remove duplicate environmental regulation and processes.

Stakeholder relations

5.120 The Committee heard about three key aspects of stakeholder relations that may benefit from further reform. These included: communication with regulated communities; reporting requirements; and regulation impact statements. These issues are canvassed in this section.

Communication with regulated communities

5.121 Throughout the course of the inquiry, the Committee heard about the difficulties that can be encountered when government agencies do not engage effectively with regulated communities. The needs of the farming sector in particular were canvassed, as well as the importance of engaging with stakeholders early in any process in addition to throughout the assessment process.

5.122 In relation to the farming community, the EFN provided examples that suggested that federal environmental laws are administered in a way that is sensitive to the needs of farmers and responsive to community standards.[119] By contrast, the Committee was also made aware of cases where members of the farming community were not well informed of their obligations under federal regulations, and where federal environmental laws were administered in a perhaps more punitive fashion than may have been necessary, particularly when communicating with the farming community when there is a breach of the EPBC Act.[120]

5.123 Australian Dairy Farmers (ADF) submitted that governments are currently not doing enough to inform farmers of the benefits of regulations, 'leading farmers to feel disengaged and bitter about the

119 Mr Bradey, EFN, *Committee Hansard*, 2 May 2014, pp. 25–6.

120 Mr Andrew Broad MP, *Committee Hansard*, 2 May 2014, p. 25; Australian Dairy Farmers (ADF), *Submission 61*, p. 3; Ms Knowles, NFF, *Committee Hansard*, 20 June 2014, pp. 19–20; Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, p. 10.

process of decision-making and the practice of compliance.'[121] The ADF identified education as a key tool in improving regulatory compliance.

5.124 The NFF also identified poor communication between the DoE and the agricultural sector as contributing to a general lack of awareness within the farming community about their responsibilities under the EPBC Act:

> … the farming community is overrepresented in compliance actions in the environment department and underrepresented in referrals. Some of the research that has been done that we refer to in our submission is that people do not understand what their responsibility is, because there is really poor communication from the department.[122]

5.125 The NFF submitted that this situation may be exacerbated with the implementation of the one stop shop scheme, with the extent and nature of the Commonwealth's role expected to change as bilateral agreements continue to be made with states and territories under the EPBC Act.[123] The NFF was concerned that the DoE may lose sight of its responsibility to communicate effectively with the farming community, and urged that it was necessary to ensure that:

> … regulators—regardless of who the regulator is, whether it be approval bodies, the state body or the Commonwealth—have the resourcing, the capacity and the expertise to be able to provide the right sort of information so that people know what their responsibilities are.[124]

5.126 The NFF expressed its concern that it may lose its EPBC Act liaison officer, which it explained is a position staffed by the DoE and is a 'key mechanism' for facilitating communication between the Department and the farming community.[125] The DoE advised that the purpose of the role was to increase awareness of EPBC Act requirements within the farming community and that:

> Effectively that role has built the expertise within the NFF to be able to do that … But there are still discussions to be had … [about] how you do that transition in a way that maintains the benefits that have been achieved to date …[126]

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121 ADF, *Submission 61*, p. 3.

122 Ms Knowles, NFF, *Committee Hansard*, 20 June 2014, pp. 19–20.

123 Ms Knowles, NFF, *Committee Hansard*, 20 June 2014, p. 20.

124 Ms Knowles, NFF, *Committee Hansard*, 20 June 2014, p. 20.

125 Ms Knowles, NFF, *Committee Hansard*, 20 June 2014, p. 20.

126 Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, p. 10.

5.127 Many inquiry participants advocated early engagement with regulated communities to ensure adequate understanding of regulations and to improve compliance. For example, the NFF noted that significant compliance costs meant that additional investment in education and awareness-raising was warranted.[127] ANEDO also advocated the provision of guidance to industry early in the process, which it argued would lead to fewer delays due to incomplete or inadequate information being provided by project proponents.[128]

5.128 The DoE accepted the need to engage with stakeholders at an early stage in the policy process so that early feedback could be gathered on the policy design, implementation and monitoring.[129] The Department advised that:

> … engagement with stakeholders is a key part of the strategy to improve the quality [of regulation] and make sure that it is fit for purpose and avoids unnecessary compliance burdens while strengthening environmental outcomes.[130]

5.129 Responding to comments regarding the uncertainty posed by stop-the-clock provisions, the DoE also informed the Committee that proponents have an opportunity to meet with decision makers in the Department to discuss what sort of information needs to be provided to progress decision making on their applications under the EPBC Act.[131] The DoE advised that these discussions tend to be very helpful to proponents wishing to progress their applications who, despite the frustrations associated with delays:

> … typically understand and has an interest in making sure that the recommendations that the department makes and the decisions that the minister makes or that we make on his behalf are rigorous and robust to legal challenge.[132]

5.130 The DoE advised that pre-referral meetings also often take place prior to any documentation being lodged by proponents. These meetings are an opportunity to discuss they key expected impacts the proposal would have, and possible ways to address those.[133] While the DoE has found these discussions very helpful, it notes that the meetings are held at the

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127 NFF, *Submission 9*, p. 2.

128 Ms Walmsley, ANEDO, *Committee Hansard*, 1 May 2014, p. 39.

129 Ms Benedikte Jensen, First Assistant Secretary, DoE, *Committee Hansard*, 26 June 2014, p. 10.

130 Ms Jensen, DoE, *Committee Hansard*, 26 June 2014, p. 10.

131 Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, p. 12.

132 Mr Thompson, DoE, *Committee Hansard*, 26 June 2014, p. 12.

133 Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, p. 14.

proponent's discretion and not all applicants will seek a pre-referral meeting.[134]

5.131 Discussing the issue of communication with stakeholders throughout the environmental assessment and approval processes, AMEC highlighted the benefits of online tracking of applications. Mr Simon Bennison noted that such online tracking had already been implemented in some state jurisdictions, even across different agencies within a jurisdiction. The Committee heard that online tracking had improved efficiency within agencies, and had also increased transparency of decision making processes.[135] Mr Bennison conceded that implementing online tracking across agencies in all jurisdictions would be an expensive undertaking, but considered that it would be a 'worthwhile investment.'[136]

Committee comment

5.132 The Committee notes the inherent value of pre-referral meetings. While it accepts it would be impractical to make such meetings compulsory, the Committee considers that there would be merit in ensuring that all potential proponents are aware of the option to hold a pre-referral meeting with departmental officers.

5.133 In terms of the information made publicly available, the Department should, as a priority, update its EPBC Act environment assessment process fact sheets, flow charts and other public documents, to include the step of an optional 'pre-referral meeting with departmental officials'.

Recommendation 12

That the Department of the Environment update its publicly available advice to prospective proponents under EPBC Act environmental assessment and approval processes to ensure that the option of having a pre-referral meeting with departmental officers is stated clearly and prominently.

134 Mr Knudson, DoE, *Committee Hansard*, 26 June 2014, pp. 14–16.

135 Mr Simon Bennison, Chief Executive Officer, AMEC, *Committee Hansard*, 20 June 2014, pp. 13, 15.

136 Mr Bennison, AMEC, *Committee Hansard*, 20 June 2014, p. 15.

Reporting requirements

5.134 The Committee received considerable evidence relating to onerous, duplicative and impractical reporting requirements. Some of these were canvassed earlier in this chapter, particularly in relation to regulations on energy efficiency and renewable energy.

5.135 More broadly, however, witnesses called for better alignment and incorporation of data across agencies, more flexibility in reporting requirements, and less duplication between Commonwealth and state/territory agencies.[137]

5.136 The ASBG provided case studies relating to the National Pollutant Inventory, waste levy calculations, and grant applications.[138] The NFF noted duplication in relation to reporting on water and under the National Pollutant Inventory, and expressed the view that:

> … there are opportunities to streamline the reporting requirements to ensure that appropriate information is collected in the most efficient manner. While initial steps have been taken to consider this issue, focus seems to have waned and more effort is required to achieve results.[139]

5.137 Once suggestion offered by the NFF was to allow industry bodies to submit aggregated data, rather than individual businesses being required to do the reporting as is currently required.[140]

5.138 The ASBG advocated for the establishment of central databases for environmental reporting, and standardised format of data or estimation techniques used by various agencies. It identified the following key areas for standardisation:

- definitions of, for example, emissions, pollutants, and acceptable ambient levels;
- sampling techniques and analytical measurements;
- time periods, averaging requirements and estimation techniques;
- error levels, non-conformance limits, up times and non-conformance correction;
- impact area, sensitive environments and neighbours;
- modelling practices and ambient assessments;

137 BOSMA, *Submission 12*, p. 4; NFF, *Submission 9*, p. 4.

138 ASBG, *Submission 80*, pp. 7–8.

139 NFF, *Submission 9*, p. 4.

140 NFF, *Submission 9*, p. 4.

- approved mitigation practices, pollution control techniques and management practices;
- reporting formats, data entry processes and time frames; and
- identification of risk and inclusion of contextual information.[141]

5.139 The MCA called for the reporting requirements of the National Pollutant Inventory to be reviewed to 'address potential impracticalities, as well as to ensure that there is a strong link between the reporting requirements and environmental objectives.'[142] AMEC also commented on the reporting and design of performance targets and advocated for the design and methodology of monitoring programs to be opened up to scrutiny by stakeholders.[143]

Committee comment

5.140 The Committee appreciates industry feedback on experiences with Commonwealth reporting requirements. The Committee notes that some of the evidence relates to energy efficiency programs that have since ceased or are under review. However, in view of the considerable administrative burden caused by some of the inconsistent, duplicative and impractical reporting requirements, the Committee considers a reconsideration of these matters is timely.

Recommendation 13

That, in consultation with industry stakeholders, the Government work across all relevant Commonwealth and state or territory agencies to review the range of environmental reporting required of industry, and investigate the possibility of developing standardised and centralised environmental databases and/or standardised measurement and formatting requirements.

141 ASBG, *Submission 80*, pp. 7–8.

142 MCA, *Submission 82*, p. 7.

143 AMEC, *Submission 83*, pp. 15–17.

Regulation Impact Statements

5.141 One of the 10 principles for Australian Government policy makers is that 'every substantive regulatory policy change must be the subject of a Regulation Impact Statement.'[144]

Committee comment

5.142 Although there was insufficient evidence presented to the inquiry for the Committee to draw broad-ranging conclusions on this issue, the Committee is supportive of the principle of government being required to provide a statement outlining the impact of a regulatory change. This is an appropriate means of ensuring accountability and transparency.

5.143 The Committee is of the view that Regulation Impact Statements should examine the holistic impact of proposals for regulatory change, as well as the expected costs associated with compliance and productivity.

Mr Alex Hawke MP

Chair

4 December 2014

144 Australian Government, 'Ten Principles for Australian Government Policy Makers' <https://www.cuttingredtape.gov.au/handbook/ten-principles-australian-government-policy-makers> viewed 1 October 2014.